

Service Date: October 12, 2001

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Filing by)	UTILITY DIVISION
Qwest Corporation, f/k/a U S WEST)	
Communications, Inc. to)	DOCKET NO. D2000.6.89
Determine Wholesale Discounts, Prices for)	
Unbundled Network Elements, Collocation,)	ORDER NO. 6260b
Line Sharing, and Related Matters.)	

FINAL ORDER ON STIPULATION

Introduction and Background

1. Around mid-year 2000, Qwest Corporation, f/k/a U S WEST Communications, Inc. (Qwest) filed an application with the Montana Public Service Commission (Commission) to determine wholesale discounts and permanent prices for unbundled network elements, collocation and line sharing. Qwest's filing was in three phases which it described as follows:

Phase 1 will address the determination of recurring costs and prices for the loop, switching, transport and signaling unbundled network elements (UNEs). In addition, this phase will address the determination of costs and prices for local interconnection service (LIS). Total element long run incremental cost (TELRIC) data for these UNEs and LIS are developed in the U S West integrated cost model (ICM).

Phase 2 will address the determination of nonrecurring costs and prices for all UNEs and LIS. In addition, this phase will address the determination of recurring and nonrecurring costs and prices associated with collocation services. TELRIC data for UNEs and LIS are developed in the U S West nonrecurring cost model (INCM), and collocation costs are developed in the U S West collocation model. Costs and prices associated with sharing the bandwidth of a loop (i.e., line sharing) will also be addressed in this phase. Finally, this phase will determine the avoided cost discounts that will apply to retail services when provided to competitive local exchange carriers (CLECs) for resale.

Phase 3 will address the determination of costs associated with modifying U S West's operational support systems (OSS) in order to

provision UNEs and LIS, and will address the manner in which these costs should be recovered.

2. On July 14, 2000 the Commission issued a Notice of Filing, Notice of Opportunity to Intervene, and on July 28, 2000 issued Procedural Order No. 6260 and Protective Order No. 6260a. Timely intervention was granted to ASCENT (Association of Communications Enterprises), Avista Communications of Montana, Inc., McLeodUSA Telecommunications Services, Inc., Montana Consumer Counsel (MCC), Montana Wireless, Inc., New Edge Networks, and Touch America, Inc. Late intervention was granted to Western Wireless.

3. Procedural Order No. 6260 contained a procedural schedule with dates staggered to accommodate discovery and prefiled testimony in each of the three phases of the docket. Hearing was initially anticipated to begin on March 12, 2001, but following numerous schedule changes hearing was noticed to begin on June 12, 2001.

4. After Notice of Public Hearing was issued on May 10, 2001, the Commission was informed that active parties to the docket were engaged in serious settlement discussions. Within a week of the scheduled hearing the parties informed the Commission that they had reached a settlement; therefore, on June 6, 2001 the Commission excused the technical witnesses from appearance at the hearing. The Commission noted that it would “open the hearing as scheduled for the purpose of admitting evidence into the record, taking any public testimony, and addressing procedural matters as necessary.” Notice of Commission Action, June 8, 2001.

5. Qwest, Montana Wireless, MCC, and Avista made appearances at the hearing. Marty Essen appeared as a public witness on behalf of Essen Communications. Certain prefiled testimony of the parties, along with responses to Commission staff discovery was admitted into the record at the hearing. These and other rulings made at the hearing are recorded in the transcript.

6. Qwest, MCC, Montana Wireless, Touch America and Avista filed a Stipulation on June 6, 2001 (Stipulation). The Stipulation is attached to this Final Order.

7. Each party signing the Stipulation asks that the Commission adopt it as a final decision in this docket and as a reasonable settlement of the issues raised by the parties. Signing the Stipulation does not indicate acceptance by the parties of any rate making principle, cost of service or pricing principle.

8. If the Stipulation is approved, Qwest agrees not to seek a general rate increase prior to June 30, 2004. The parties ask the Commission to issue a Final Order approving the Stipulation.

Commission Decision

9. The Commission conditionally approves the Stipulation as reasonable and in the public interest. The condition is that the Commission reserves the right to argue, in its recommendation to the FCC following Qwest's 271 filing, that elements of the Stipulation should be changed before the FCC approves Qwest's 271 petition for interLATA market entry in the State of Montana.

10. The Commission conditions its approval because this docket is related to Docket No. D2000.5.70, the Qwest Montana section 271 proceeding. Costing and pricing issues that arise in the 271 proceeding are not necessarily resolved by this Stipulation. Qwest concurs that the Stipulation is not all-inclusive and that other costing and pricing issues will remain if the Stipulation is approved. Response to PSC Data Request 13-264(e). The Commission expects that these and other costing and pricing issues will be addressed in another costing and pricing docket. The consideration of other costing and pricing issues need not, however, hold up the approval of rates in the Stipulation.

11. Prices contained in the Stipulation may be at odds with final Commission recommendations on certain issues in the 271 proceeding. The Commission cannot be more specific because its analysis and decisions in the 271 proceeding are not complete.

12. The discovery of an inconsistency between the Stipulation and Commission conclusions in the 271 proceeding will not mean that a subsequent Commission order will change rates in the Stipulation. However, as necessary the Commission will include in its recommendation to the FCC on Qwest's 271 entry its determination that aspects of Qwest's

pricing and costing are inconsistent with the Commission's analysis and findings in the 271 multistate process, and that 271 approval should be conditioned on such inconsistencies being corrected.

13. In the Stipulation Qwest agrees not to make a general rate increase filing prior to June 30, 2004. This does not preclude the Commission from initiating a general rate case for Qwest that may result in general rate increases or decreases, or from ordering retail rate changes for a subset of Qwest's regulated retail prices.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Qwest is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA, particularly Section 69-3-848, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested persons in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

Order

The attached Stipulation of the parties is approved as a settlement of the issues in this docket, subject to the condition described at paragraphs 9-12 herein.

DONE AND DATED this 11th day of October, 2001, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.